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No. 93-947

In the Supreme Court of the United States

OCTOBER TERM, 1993

JAMES P. DAILEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner makes two claims. First, he argues that the military trial and appellate judges in his case were not qualified to hold those positions because they were appointed to them by the Judge Advocate General, in violation of the Appointments Clause of the Constitution, Art. II, § 2, Cl. 2. Pet. 3-4. Second, he contends that his trial and appeal to the Navy-Marine Corps Court of Military Review was fundamentally unfair because the military judges sitting on those courts do not enjoy a fixed term of office and can be reassigned to other military duties by the Judge Advocate General based on his evaluation of their performance as judges. Pet. 4-5.

This Court rejected those claims in its recent decision in *Weiss* v. *United States*, No. 92-1482 (Jan. 19, 1994).

There is no need for further consideration of the identical claims raised by petitioner in this case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

FEBRUARY 1994